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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/632,545	08/01/2003	Michael F. Brletich	12539	2681

7590 02/28/2006

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EXAMINER

GARCIA, ERNESTO

ART UNIT PAPER NUMBER

3679

DATE MAILED: 02/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/632,545

Applicant(s)

BRLETICH ET AL.

Examiner

Ernesto Garcia

Art Unit

3679

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 December 2005 and 30 September 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9, 11-16 and 21-23 is/are pending in the application.
- 4a) Of the above claim(s) 22 and 23 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 9 and 11-16 is/are allowed.
- 6) ☒ Claim(s) 1-8 and 21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date: _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Election of Species

Claims 22 and 23 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim. Applicants timely traversed the restriction (election) requirement in the reply filed on 06/20/2005.

Specification

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: "single flexible extension member" recited in claim 21, line 6.

Claim Objections

Claim 21 is objected to because --extension-- needs to be inserted after "flexible" in line 12. For purposes of examining the instant invention, the examiner has assumed these corrections have been made.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 21 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 21, the limitation "said body being sized, shaped and configured for mating with an interior wall of the bar" in line 5 makes unclear what shape, size, and configuration of the body is required to allow the body for mating with an interior wall of the bar. Further, the limitation "said plug being further configured such that a portion of said plug on a side thereof directly opposite said single flexible member mates with the interior wall of the bar that is directly opposite the aperture in the sidewall of the bar that receives said aperture engaging member of said single flexible member" in lines 11-14 makes unclear what configuration of the plug is required to allow the plug to mate with the interior wall of the bar.

Claim Rejections - 35 USC § 102

Claims 1-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Antonucci et al., 6,119,306.

Regarding claim 1, Antonucci et al. disclose, in Fig. 35, a device comprising a fastener plug **13** including a plug portion **20'** and a fastener portion **24**. The plug portion **20'** defines an end cap **20'** and at least one disc **28** spaced apart from the end cap **20'**. The fastener portion **24** defines a flexible extension member **27** extending outwardly from the end cap **20'**. The extension member **27** includes a projecting member **26'**. Given the structure of Antonucci et al. above, the disc is sized and shaped to mate with and seal an open end of a bar. The flexible extension member is able to flex as the member is installed in the open end of the bar and snap back to an original position when the projection member engages an aperture in a sidewall of the bar. Further, the disc defines a diameter slightly larger than a diameter of the open end of the bar.

Regarding claim 2, the end cap **20'** defines a peripheral edge **B1** and a flat surface edge **B2** along the peripheral edge **B1**. Note, the claims are written with a broad breadth that Antonucci et al. reads on this claim. Applicants should consider rephrasing that the peripheral edge has a truncated edge or truncated surface.

Regarding claim 3, a rib **A1** connects the disc **28** to the end cap **20'** (see marked-up attachment provided in last Office action).

Regarding claim 4, the disc **28** is a plurality of discs **28** spaced apart from the end cap **20'**.

Regarding claim 5, the extension member **27** extends upwardly from the end cap **20**.

Regarding claim 6, the extension member **27** extends across the discs **28**.

Regarding claim 7, the discs **28** define a flat surface edge **A2** (see marked-up attachment provided in last Office action; Figure 40).

Regarding claim 8, the projection member **26** defines an inclined surface **A2** (see Figure 41).

Claims 1, 2, 4, and 5 are rejected under 35 U.S.C. 102(b) as being anticipated by Popsys, 5,496,141.

Regarding claim 1, Popsys discloses, in Fig. 2, a device comprising a fastener plug **10** including a plug portion **12** and a fastener portion **18**. The plug portion **12** defines an end cap **12** and at least one **22** spaced apart from the end cap **12**. The fastener portion **18** defines a flexible extension member **14** extending outwardly from the end cap **12**. The extension member **14** includes a projecting member **16**. Given the structure of Popsys above, the disc is sized and shaped to mate with and seal an open end of a bar. The flexible extension member is able to flex as the member is installed in

the open end of the bar and snap back to an original position when the projection member engages an aperture in a sidewall of the bar. Further, the disc defines a diameter slightly larger than a diameter of the open end of the bar.

Regarding claim 2, the end cap **12** defines a peripheral edge and a flat surface edge along the peripheral edge. Note, the claims are written with a broad breadth that Popsys reads on this claim. Applicants should consider rephrasing that the peripheral edge has a truncated edge or truncated surface.

Regarding claim 4, the one disc **22** is a plurality of discs **20,22** spaced apart from the end cap **12**.

Regarding claim 5, the extension member **14** extends upwardly from the end cap **12**.

Claim 21 is rejected under 35 U.S.C. 102(b) as being anticipated by Gieling et al., 5,144,780.

Regarding claim 21, Gieling et al. disclose, in Figure 2, a device comprising a plug. The plug comprising an end cap **29**, a body **33**, and a single flexible extension member **59** (note that the upper portion on either side of the end cap has a single flexible extension). The body **33** extends from the end cap **29**. The flexible extension

member **59** has an fixed end **A4** (see marked-up attachment provided in the last Office action) and an free end **A5**. The fixed end **A4** is fixed to the end cap **29**. The free end **A5** is opposite the fixed end **A4**. The flexible extension member **59** includes at least a portion **A6** thereof extending between and within a space **A7** defined by the end cap **29** and a portion **A8** of the body **33** spaced farthest from the end cap **29**. The free end **A5** includes an aperture engaging member **57**.

The body **33** is sized, shaped and configured for mating with an interior wall of a bar. Further, the plug is further configured such that a portion of the plug on a side thereof directly opposite the single flexible extension member mates with the interior wall of the bar that is directly opposite the aperture in the sidewall of the bar that receives said aperture engaging member of said single flexible member.

Claims 1-3, 5, and 8 are rejected under 35 U.S.C. 102(e) as being anticipated by Kwilosz, 6,799,9341.

Regarding claim 1, Kwilosz disclose, in Fig. 5, a device comprising a fastener plug **10** including a plug portion **200** and a fastener portion **14**. The plug portion **200** defines an end cap **200** and at least one disc **12** spaced apart from the end cap **200**. The fastener portion **14** defines a flexible extension member **22** extending outwardly from the end cap **200**. The extension member **22** includes a projecting member **54**. Given the structure of Kwilosz above, the disc is sized and shaped to mate with and

seal an open end of a bar. The flexible extension member is able to flex as the member is installed in the open end of the bar and snap back to an original position when the projection member engages an aperture in a sidewall of the bar. Further, the disc defines a diameter slightly larger than a diameter of the open end of the bar.

Regarding claim 2, the end cap **200** defines a peripheral edge and a flat surface edge along the peripheral edge. Note, the claims are written with a broad breadth that Kwilosz reads on this claim. Applicants should consider rephrasing that the peripheral edge has a truncated edge or truncated surface.

Regarding claim 3, a rib **30** connects the disc **12** to the end cap **200**.

Regarding claim 5, the extension member **22** extends upwardly from the end cap **200**.

Regarding claim 8, the projection member **54** defines an inclined surface (the ramp).

Allowable Subject Matter

Claims 9 and 11-16 are allowed.

The following is a statement of reasons for the indication of allowable subject matter:

regarding claim 9, the prior art of record does not disclose or suggest a device comprising a fastener plug including an end cap defining a flat truncated surface along a peripheral edge; there is no motivation absent applicant's own disclosure to modify Popsys, 5,496,141, Kwilosz, 6,799,931, Antonucci et al., 6,119,306, and Gieling et al., 5,144,780, because there is no requirement or need for a flat truncated surface to permit water or waste to drain out of a trashcan bar 20 when used with the device;

regarding claims 11-14, these claims directly or indirectly depend from claim 9;

regarding claim 15, the prior art of record does not disclose or suggest a device comprising an extension member extending across a flat surface edge of a plurality of discs; there is no motivation absent applicant's own disclosure to modify the closest prior art to Popsys, 5,496,141, and Antonucci et al., 6,119,306, because the extension member in Popsys extends perpendicular to the device, and the discs in Antonucci et al. do not contain any flat surface edge to allow the extension member to be across the flat surface edge; and,

regarding claim 16, the prior art of record does not disclose or suggest a device comprising an aperture-engaging member defining opposing columns joined together by a rib; there is no motivation absent applicant's own disclosure to modify the references because no one teaches the subject matter to facilitate insertion and removal of the aperture-engaging member within and out of an opening 44 formed in a trashcan bar.

Response to Arguments

Applicants' arguments filed 12/13/2005 have been fully considered but they are not persuasive.

Applicants argue that claim 1 has been amended to recite "the aperture in the sidewall of the bar extends completely therethrough" and "the projection member of the flexible extension member extends through the aperture" as stated at the bottom of page 6 to page 7 of the remarks. In response to applicants' argument that the references fail to show certain features of applicants' invention, it is noted that the features upon which applicant relies (i.e., "the projecting member extends through the aperture") is not recited in a positive recitation in the rejected claims. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Applicants should note that the limitation "when the projecting member extends through the aperture" appears in claim 1, line 13; however, the limitation is conditional and does not indicate that the projecting member is actually in the aperture, especially "through the aperture" as applicants argue. Further, how does further limiting the intended use of the device further limits the device? According to the amendment, the changes do not add any structural limitations to the device to overcome the rejections and therefore the device remains structurally the same.

Applicants' arguments with respect to claim 21 have been considered but are moot in view of the new grounds of rejection.

Conclusion

The following prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Gordon, 5,651,632, and Mair, 4,956,900 show a similar device.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. The new limitation "said plug being further configured such that a portion of said plug on a side thereof directly opposite said single flexible member mates with the interior wall of the bar that is directly opposite the aperture in the sidewall of the bar that receives said aperture engaging member of said single flexible member" in claim 21, lines 11-14, necessitated the new grounds of rejection. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ernesto Garcia whose telephone number is 571-272-70837083. The examiner can normally be reached from 9:30-6:00. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9306 for regular communications and (703) 872-9306 for After Final communications.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached at 571-272-7087.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

E.G.
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February 20, 2006



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